



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Release Number: **200934045**
Release Date: 8/21/09
Date: 5/29/09
UIL Code: 501.04-07

Contact Person:
Identification Number:
Contact Number:
Employer Identification Number:
Form Required To Be Filed:
Tax Years:

Dear

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(4). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

Letter 4040(CG) (11-2005)
Catalog Number 47635Z

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: 5/29/09

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

UIL Number 501.04.07

M=Homeowners Association

N=Date 1

P=Date 2

Q=City & State

Y= Road

Z= Road

Dear

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(4). The basis for our conclusion is set forth below.

Issues

Does the applicant, who is formed to maintain and insure a private road in Q qualify for exemption under section 501(c)(4) of the Internal Revenue Code?

Facts

You, M, are an unincorporated association. Your organizing document titled "Common Driveway Agreement" was entered into on N, between the Grantor and Owners, and received for record by the assistant town clerk on P. The agreement states that the Grantor is the owner of the fee interest in the bed of land constituting the private passageway known as Y, in Q, and the Owners are all persons with a legal or equitable interest in land abutting and having non-exclusive access on and over the private passageway known as Y to and from their land and Z. As you are not the Grantor, you do not own the road, Y. The agreement states that Y constitutes a common accessway abutting lands of Owners and the road provides ingress and egress to said lands of Grantor and Owners. The Common Driveway Agreement was formed to declare the

following rights and obligations as to the maintenance of Y by the Grantors and Owners:

- Each of the Owners as well as their guests and emergency vehicles are granted the right to pass over Y.
- The Owners shall attractively maintain the area of Y between Z and their property lines.
- When engaged directly or indirectly by Owner, Owner shall prohibit bulldozers and other crawler and cleated machines from unloading onto or traveling on Y.
- The finished surface of each driveway shall blend with Y to properly protect the road.
- The cost of maintaining the entire length of Y and any existing drainage facilities therein shall be borne pro rata by each Grantor and Owner.
- Emergency repairs for any condition within Y which prohibits access to the abutting lots may be made by a majority of available Owners if a reasonable attempt to contact all Owners has been made.
- Owners shall decide when and what repairs and maintenance are necessary and desirable to maintain Y. The cost of performing maintenance and/or repair work shall be borne proportionally by each Owner. Necessary legal action may be taken to collect the amount owed if an Owner refuses or fails to pay his or her share of the cost.
- Expenditures for capital improvements shall be made only upon the unanimous consent of all Owners.
- Expenses related to the construction, repair or maintenance of any residence on a single parcel is the sole responsibility of the Owner of the parcel. The Owner is responsible for restoring Y to its condition prior to the activity.
- Each Owner covenants and agrees to ensure that comprehensive liability insurance on Y is in full force and effect at all times.
- The easements and rights and obligations set forth are perpetual and shall run with the land and bind the Owners and their respective heirs, successors, administration, and assigns.
- The Owners covenant and agree to maintain a checking account for payment of expenses related to the agreement. The amount of each periodic deposit into the checking account shall be decided by the Owners.

Your organization is made up of eight Owners, two of which are the Grantors. One of the Grantors is also an officer of your organization.

You did not include a narrative description of your activities with Form 1024. In Form 1024 you indicated that you are self funded and the financial data shows that your only revenue is from

gross dues and assessments of members. An attached itemized list of expenses indicates that your funds are used for liability insurance, road maintenance, and snow removal.

Your letter dated May 21, 2008, states that you are requesting tax exemption in order to have a checking account to accumulate the funds paid annually by homeowners to be used for the maintenance and insurance of the road the homeowners live on and share use of. You stated that the town in which you live in Q, does not own or maintain the road.

You stated in a telephone conversation on September 16, 2008, that Y is a dead end road and that the owners' homes are along the road. You stated that the road is open to the public.

Your letter dated December 6, 2008, confirms that the road is not gated and is open to the public.

Law

Code section 501(c)(4) provides for the exemption of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

Income Tax Regulations section 1.501(c)(4)-1(a)(2) provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one that is operated primarily for the purpose of bringing about civic betterments and social improvements.

In Revenue Ruling 72-102, 1972-1 CB 149, an organization formed to preserve the appearance of a housing development and to maintain streets, sidewalks and common areas for use of the residents in the development was determined to qualify for exemption under section 501(c)(4) of the Internal Revenue Code. The organization described in Revenue Ruling 72-102 owned the common green areas, streets and sidewalks that it maintained.

Revenue Ruling 74-99, 1974-1 CB 131, describes the circumstances in which a homeowners' association may qualify for exemption under section 501(c)(4) of the Internal Revenue Code. The ruling states that three elements must be satisfied:

- 1) it must serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental;
- 2) it must not conduct activities directed to the exterior maintenance of private residences and,
- 3) the common areas or facilities it owns and maintains must be for the use and enjoyment of the general public.

Revenue Ruling 75-199, 1975-1 CB 160, describes a nonprofit organization that restricts its membership to individuals of good moral character and health belonging to a particular ethnic group residing in a stated geographical area and provides sick benefits to members and death benefits to their beneficiaries. The organization's income is derived principally from membership dues. It was determined that the organization is not exempt under section 501(c)(4) of the Internal Revenue Code.

Revenue Ruling 80-63, 1980-1 CB 116, clarifies Revenue Ruling 74-99, 1974-1 CB 131. It provides answers to specific questions as to whether the conduct of certain activities will affect the exempt status under section 501(c)(4) of the Internal Revenue Code of otherwise qualifying homeowners' associations. The ruling states that:

- 1) the term "community" does not embrace a minimum area or a certain number of homeowners,
- 2) a homeowners' association may not receive an exemption if it represents an area that is not a community and it restricts the use of its recreational facilities to only members of the association.
- 3) an affiliated recreational organization operated totally separate from the homeowners' association may be exempt so long as there is no benefit flowing back to any member, and
- 4) a homeowners' association cannot own and maintain parking for the sole use of ties members if it is not a community.

Application of Law

Based upon the information submitted, you are not like the organization in Rev. Rul. 72-102. You were formed to maintain a road owned by the Grantor and not by the organization. Your activities are therefore for the benefit of the Grantor and Owners as defined in your organizing document and not for the community as a whole.

Furthermore, you are not like the organization in Rev. Rul. 74-99. You were formed to maintain a road that is owned by the Grantor, not by the organization. In addition, your organizing document states that the road you were formed to maintain is a private road and that each of the Owners as well as their guests and emergency vehicles are granted the right to pass over the road. Your organizing document does not state that the road is for the use of the public. Your organization was therefore formed to benefit the Owners and any benefit to the community as a whole is minor and incidental. In addition, your organization is made up of two Grantors and eight Owners and one of the two Grantors is also an Officer of your organization. As defined in Rev. Rul. 80-63 and Rev. Rul. 74-99, you do not meet the requirements for a community. The organization therefore is not operated exclusively for the promotion of social welfare within the meaning of section 501(c)(4) of the Code.

Based on the information given, you are like the organization in Revenue Ruling 75-199, 1975-1 CB 131. Your membership is limited to the Grantor and Owners as defined in your organizing document. Your only income is from member dues. An organization of the type described in the ruling is essentially a mutual, self-interest type of organization. Its income is used to provide direct economic benefits to members and any benefit to the larger community is minor and incidental. Where the benefit from an organization is limited to that organization's members (except for some minor and incidental benefit to the community as a whole), the organization is not operated exclusively for the promotion of social welfare within the meaning of section 501(c)(4) of the Code.

Applicant's position

Your letters dated May 21, 2008, and December 6, 2008, outline your position with regard to your qualification for tax exemption under section 501(c)(4) of the Internal Revenue Code.

You stated in your letter dated May 21, 2008, that the road is for the common good and general welfare to the community. You stated that the road is used not only by Owners, but also by neighbors who visit the residents, family who visit, providers of services, delivery services, and utility maintainers. You stated that a well kept, safe road would be for the good of all including others who travel on it from time to time who you do not know.

In your letter dated December 6, 2008, you expanded on the benefit for the common good and general welfare to the community by stating that the road is not gated and is accessible to all community members. You stated that non members frequently drive or walk on the road at their free will.

Service's response to applicant's position

Your letters dated May 21, 2008, and December 26, 2008, assert that you meet the requirements of section 501(c)(4) of the Internal Revenue Code because you are operated exclusively for the common good and general welfare to the community. Based on the information submitted, it is our position that you are not operated exclusively for the promotion of common good and general welfare of the community, and as a result, tax exemption under section 501(c)(4) is precluded.

Like the organization in Revenue Ruling 75-199, 1975-1 CB 131, that did not qualify for exemption under code section 501(c)(4), the benefits derived from your activities are limited to your members, except for some minor and incidental benefit to visitors and the public as a whole.

Revenue Ruling 72-102, 1972-1 CB 149, Revenue Ruling 74-99, 1974-1 CB 131 and Revenue Ruling 80-63, 1980-1 CB 116 are applicable to organizations that are comprised of individuals owning homes in a particular area defined as a community. You are not like the organizations described in these rulings. Your organization was formed to maintain a privately owned road that does not meet the definition of community. These rulings are not applicable in determining

your exempt status under section 501(c)(4) of the Internal Revenue Code.

Conclusion

Based on the facts presented above, we hold that you do not meet the requirements for tax exemption under section 501(c)(4) of the Internal Revenue Code.

Based on the facts you have provided in your application for recognition of exemption, we are not able to conclude that you are organized and operated exclusively for the promotion of social welfare.

Accordingly, you do not qualify for exemption under section 501(c)(4) of the Internal Revenue Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter.

We will consider your statement and decide if that information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". The statement of facts (item 4) must be accompanied by the following declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

The declaration must be signed by an officer or trustee of the organization who has personal knowledge of the facts.

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. To be represented during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter to you. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements